Supreme Court, U.S.
FILED
JAN 11 2011
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No. 10-912

In The

Supreme Court of the United States

EVERT CLYDE BAKER, JR.,

Petitioner,

versus

THE STATE OF TEXAS,

Respondent.

On Petition For A Writ Of Certiorari To The Eleventh Court Of Appeals At Eastland, Texas

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Should the "unreasonable application" clause for federal writs of habeas corpus in 28 U.S.C. § 2254(d)(1) be engrafted on *Strickland* for ineffective claims on direct appeal in state courts?

2. Did this Court reaffirm *Florida v. J.L.*, 529 U.S. 266 (2000) in *Virginia v. Harris*, 130 S.Ct. 10 (2009) and did the Texas Court of Appeals err in misapplying *J.L.*'s ruling in Petitioner's case?

PARTIES TO THE PROCEEDING

The Petitioner is Evert Clyde Baker, Jr., the defendant and defendant-appellant in the courts below.

The Respondent is the State of Texas, the appellee in the courts below.

TABLE OF CONTENTS

Page

Questions Presented i

Parties to the Proceeding ii

Table of Contents iii

Table of Authorities iv

Opinions Below 1

Jurisdiction 1

Constitutional and Statutory Provisions Involved 2

Statement of the Case 3

Reasons for Granting the Writ 6

I. The Eastland Court's Reasoning That Trial Counsel's Decision Not To File A Motion To Suppress Evidence Because Jeopardy Had Attached Denied Petitioner Fundamental Due Process On Direct Appeal 8

II. Because The Eastland Court Relied On Federal Law And Not State Law, This Court Has Jurisdiction To Entertain Petitioner's Fourth Amendment Claim 10

Conclusion and Prayer 12

APPENDIX

Memorandum Opinion Of The Texas Eleventh Court Of Appeals Filed April 29, 2010 ..... App. 1

Judgment Of The State Trial Court ..... App. 7

Order Denying Petition For Discretionary Review Filed October 13, 2010 ..... App. 13

TABLE OF AUTHORITIES

Page

TEXAS STATE CASES

Baker v. Texas, 2010 WL 1713315, No. 11-09-00020-CR (Tex. App. – Eastland 2010, pet. ref'd) 1

Brother v. State, 166 S.W.3d 255 (Tex. Crim. App. 2005) 11

State v. Tarvin, 972 S.W.2d 910 (Tex. App. – Waco 1998, pet. ref'd) 6

FEDERAL CASES

Florida v. J.L., 529 U.S. 266, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000) 7, 11

Harrison v. Quarterman, 496 F.3d 419 (5th Cir. 2007) 10

Perez v. Cain, 529 F.3d 588 (5th Cir. 2008) 16

Richards v. Quarterman, 578 F.Supp.2d 849 (N.D. Tex. 2008), *aff'd*, 566 F.3d 553 (5th Cir. 2009) 9

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) 6, 9, 12

Virginia v. Harris, 130 S.Ct. 10, 175 L.Ed.2d 322 (2009) 7, 8, 11, 12

Williams v. Taylor, 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000) 8, 9

Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562, 97 S.Ct. 2849, 53 L.Ed.2d 965 (1977) 11

TABLE OF AUTHORITIES – Continued

Page

UNITED STATES CONSTITUTION

U.S. CONST. amend. IV 2, 11

U.S. CONST. amend. VI 3

U.S. CONST. amend. XIV 3, 8, 10

TEXAS CODES, STATUTES, AND RULES

TEX. TRANSP. CODE ANN. § 545.060 (Vernon 2008) 11

TEX. R. APP. P. 47.1 ..... 2, 9, 10

FEDERAL STATUTES

28 U.S.C. § 1254(1) 1

28 U.S.C. § 2254(d)(1) 7

PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

Petitioner Evert Clyde Baker, Jr., respectfully prays that a writ of certiorari issue to review the final decision of the Texas Eleventh Court of Appeals in this case.

OPINIONS BELOW

The Memorandum Opinion of the Texas Eleventh Court of Appeals Appendix ("App.") 1 is unreported; *Baker v. Texas*, 2010 WL 1713315, No. 11-09-00020-CR (Tex. App. – Eastland 2010, pet. ref'd). It is included as App. 1.

JURISDICTION

The judgment of the Court of Appeals was entered on April 29, 2010. Petitioner's timely filed Petition for Discretionary Review was denied on October 13, 2010, by the Texas Court of Criminal Appeals. (App. 2). The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Rule 47.1 of the Texas Rules of Appellate Procedure provides:

> (a) **Written Opinions**. The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.

TEX. R. APP. P. 47.1.

The Fourth Amendment to the United States Constitution provides as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

The Sixth Amendment to the United States Constitution provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him to have compulsory process

> for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.
>
> U.S. CONST. amend. VI.

The Fourteenth Amendment to the United States Constitution provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> U.S. CONST. amend. XIV.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below.

On September 5, 2008, Petitioner was convicted in the 396th District Court of Tarrant County, Texas in Cause Number 1047321D for the offense of Driving While Intoxicated-Felony Repetition. Punishment was assessed by the court at ten (10) years in the Institutional Division of the Texas Department of Criminal Justice probated for three (3) years and a $1,000.00 fine. (App. 3). Petitioner timely gave his Notice of Appeal. On January 9, 2009, the Texas

Second Court of Appeals in Fort Worth, Texas, transferred the instant case to the Texas Eleventh Court of Appeals in Eastland, Texas.

The Eastland Court delivered a memorandum opinion on April 29, 2010, affirming the trial court's judgment, and holding that Petitioner's trial counsel was not ineffective for failing to file a motion to suppress because jeopardy had attached and Petitioner's suppression issue was without merit. Petitioner's timely filed Petition for Discretionary Review was denied by the Texas Court of Criminal Appeals on October 13, 2010.

B. Statement of Facts.

On December 6, 2006, at about 5:00 p.m., Officer Thomas Tice of the Euless Police Department was stopped eastbound on West Harwood at the Main Street traffic light in Euless, Tarrant County, Texas, when a motorcyclist pulled up to his right and motioned him to roll down his patrol car window. The motorcyclist informed Tice a black Ford Ranger pickup that had just turned southbound on Main Street was weaving all over the road and he believed the driver to be intoxicated. Tice then drove immediately after the pickup and caught up with the vehicle at the 900 block of North Main. As Tice was following the pickup, Tice observed the vehicle was weaving within its lane. Based on the information the motorcyclist had provided Tice, coupled with Tice's brief observation of the suspect black Ranger pickup

weaving within its lane, Tice initiated a traffic stop. The driver of the pickup then pulled into the parking lot of a convenience store in about the 300 block of North Main and stopped. The driver of the truck was identified as Evert Clyde Baker, Jr. After performing field sobriety tests with the assistance of Officer Robert Provost, Baker was arrested for the offense of driving while intoxicated and transported to the Euless Police Department.

At trial, the police officer failed to state specific articulable facts and reasonable inferences to support the conclusion that any criminal activity was involved in Petitioner's driving at the time in question. In fact, the officer specifically denied having observed anything to justify the stop:

> Q. [Defense Counsel]: Okay. Now, when you got behind him, and I believe you testified to this twice now, you stated that he stayed within his lane of traffic, but he moved from one side of that lane of traffic to the other side of the lane of traffic; is that correct?
>
> A. [Tice]: Yes, but not just once. He was weaving from line to line as we went down the road. I can't tell you how many times, but he was steadily drifting back and forth between the lines.
>
> Q. But so that I'm clear, though, in your testimony you said he never crossed the lines?

> A. That's correct. That's from line to line within his lane.

(R.R., Vol. 3, p. 54).

Petitioner's attorney never filed a motion to suppress nor did he ever object to the testimony or evidence related to Petitioner's arrest at trial. After the State rested its case in chief, Petitioner's counsel moved for an instructed verdict arguing that there was no probable cause for the stop of Petitioner's vehicle specifically relying on the Texas Tenth Court of Appeals' decision in *State v. Tarvin*, 972 S.W.2d 910 (Tex. App. – Waco 1998, pet. ref'd). The trial court denied the instructed verdict. This appeal resulted.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari to rein in the appellate judges in Eastland, Texas, who have failed to follow this Court's guiding principles for *Strickland* claims on direct appeal. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). While it is rare to raise such a claim on direct appeal, the Petitioner is essentially barred from relitigating the ineffective issue later if said issue is adjudicated on the merits in the state appellate courts. Thus, it is essential that Petitioner get his first and last bite at the apple on direct appeal in a meaningful manner. Fundamental due process demands nothing less. This Court must step in because the Texas Court of Criminal

Appeals failed in its duty to control the courts under its charge.

Under the Antiterrorism and Effective Death Penalty Act (AEDPA) if the state court correctly identifies the governing legal rule but applies it unreasonably to the facts of the prisoner's case, then the state court's decision involves an "unreasonable application of clearly established federal law." 28 U.S.C. § 2254(d)(1). This Court needs to engraft on *Strickland* the "unreasonable application of clearly established federal law" standard of review for those petitioners who raise ineffective claims on direct appeal, as said petitioners similarly situated will be collaterally barred from raising said claims again in both federal and state courts via writ of habeas corpus. This Court must restructure *Strickland* and make it more of a mandatory guideline instead of what appears in Texas to be a discretionary one in order to prevent meritorious ineffective claims from being denied in the state intermediate appellate courts on direct appeal without any meaningful appellate review. By restructuring *Strickland* in such a way, these particular petitioners would be protected and provided due process as their claims could be reviewed again by the courts of last resort, like the Texas Court of Criminal Appeals, utilizing the "unreasonable application" standard. Thus, this case is of the utmost importance to the jurisprudence of the entire Nation.

Lastly, this Court left the door open as to whether or not *J.L.* was reaffirmed in *Harris. Florida v. J.L.*,

529 U.S. 266, 270, 120 S.Ct. 1375, 1378, 146 L.Ed.2d 254 (2000); *Virginia v. Harris*, 130 S.Ct. 10, 175 L.Ed.2d 322 (2009). The facts in Petitioner's case are analogous to the facts in *Harris*. Thus, clarification is needed from this Court so that state courts that issue decisions based on the Fourth Amendment alone and, not state constitutional law grounds, apply this Court's rulings correctly.

I. The Eastland Court's Reasoning That Trial Counsel's Decision Not To File A Motion To Suppress Evidence Because Jeopardy Had Attached Denied Petitioner Fundamental Due Process On Direct Appeal.

An appellate court's failure to give a defendant an opinion on his claims for relief on direct appeal lacks the essentials of due process and violates the Fourteenth Amendment. U.S. CONST. amend. XIV. A decision is contrary to clearly established federal law "if the state court arrives at a conclusion opposite to that reached by [the Supreme Court] on a question of law or if the state court decides a case differently than [the] Court has on a set of materially indistinguishable facts." *Williams v. Taylor*, 529 U.S. 362, 412-13, 120 S.Ct. 1495, 1523, 146 L.Ed.2d 389 (2000) (alteration in original). A state court's decision involves an unreasonable application of clearly established federal law if the state court "correctly identifies the governing legal rule but applies it unreasonably to the facts of a prisoner's case." *Id.* at 407-08, 120 S.Ct. at 1520. An unreasonable application of federal law may be

corrected under the guiding principles of *Williams* if the application is objectively unreasonable. *Id.* at 408-09, 120 S.Ct. at 1520.

On April 29, 2010, the Eastland Court affirmed the trial court's judgment in a memorandum opinion holding, *inter alia*, that trial counsel's decision to challenge the legality of Petitioner's detention by the arresting officer through a motion for instructed verdict, as opposed to a motion to suppress, was sound professional judgment because jeopardy had attached and the officer had reasonable suspicion to conduct a traffic stop of Petitioner for suspicion of DWI because of the uncorroborated information provided to him by an anonymous informant.

The Eastland Court provides not a single case in support of the proposition that trial counsel's decision to challenge the legality of the stop through an instructed verdict under these circumstances was sound trial strategy under *Strickland*. The Eastland Court had a duty to address every issue raised and advise the parties of the basic reasons for the Court's decision. TEX. R. APP. P. 47.1. The Eastland Court, however, failed to address Petitioner's ineffective claim as required under Rule 47.1 of the Texas Rules of Appellate Procedure. Under the circumstances in this case, said failure to provide legal support in favor of trial counsel's decision fails under the guiding principles adopted by the Supreme Court for which the Eastland Court is bound to follow and apply in its analysis of ineffective claims. *Accord Richards v. Quarterman*, 578 F. Supp.2d 849, 854 (N.D. Tex.

2008), *aff'd*, 566 F.3d 553 (5th Cir. 2009); *Perez v. Cain*, 529 F.3d 588, 594 (5th Cir. 2008); *Harrison v. Quarterman*, 496 F.3d 419, 424 (5th Cir. 2007); TEX. R. APP. P. 47.1. Thus, Petitioner was denied fundamental due process by the Eastland Court. U.S. CONST. amend. XIV.

Engrafting the "unreasonable application" standard for ineffective claims on direct appeal would deter state intermediate appellate courts from issuing such opinions as was done in Petitioner's case as well as lessen the caseload in this Court and the courts of last resort in state courts where petitioners who have been denied in the same manner petition said courts of last resort for relief because of the intermediate appellate court's failure to render a decision that reasonably applies *Strickland*. It would also provide those petitioners similarly situated who raise ineffective claims on direct appeal meaningful appellate review of said claims as they will in all certainty be collaterally barred from doing so again in federal and state courts via writ of habeas corpus.

II. Because The Eastland Court Relied On Federal Law And Not State Law, This Court Has Jurisdiction To Entertain Petitioner's Fourth Amendment Claim.

Secondly, the Eastland Court's argument that the traffic stop of Petitioner was reasonable and need not be corroborated by independent observation of the arresting officer after being supplied information

from an anonymous informant is not supported by the Supreme Court's recent denial of certiorari in *Harris*. *Harris*, 130 S.Ct. at 11; *see also* TEX. TRANSP. CODE ANN. § 545.060 (Vernon 2008). The Eastland Court's reliance on *Brother* in support of its contention that the officer had reasonable suspicion **under the Fourth Amendment** simply fails under the Supreme Court's pronouncement and reaffirmance of *J.L.* in *Harris*. *J.L.*, 529 U.S. at 270, 120 S.Ct. at 1378; *Harris*, 130 S.Ct. at 11; *compare Brother v. State*, 166 S.W.3d 255, 258-59 (Tex. Crim. App. 2005). The Eastland Court does not have the luxury to ignore the decisions of the Supreme Court of the United States and its application of federal law. U.S. CONST. amend. IV; *see also* TEX. R. APP. P. 47.1. At oral argument, Petitioner reminded the Eastland Court of the Supreme Court's pronouncement in *Harris*. The Eastland Court relied on the Fourth Amendment, ***and not state law***, in reaching its conclusion that Petitioner's suppression issue was without merit. Thus, the decision rested solely on federal grounds. That the Eastland Court might have, but did not, invoke state law does not foreclose jurisdiction in this Court. *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 568, 97 S.Ct. 2849, 2854, 53 L.Ed.2d 965 (1977). Thus, this Court has jurisdiction to entertain Petitioner's claim that his suppression issue had merit and would have been granted under *J.L.* and *Harris*.

CONCLUSION AND PRAYER

Review from this Court is warranted to reexamine *Strickland* under the particular facts in this case and to consider restructuring said ruling to include the "unreasonable application of clearly established federal law" for those petitioners that raise ineffective claims on direct appeal as they will in all certainty be collaterally barred from doing so again in federal and state courts via writ of habeas corpus if their meritorious claims are denied on direct appeal without meaningful appellate review and to reconcile the conflict that arose from this Court's opinion denying certiorari in *Harris*. For the foregoing reasons, the petition for a writ of certiorari to the Texas Eleventh Court of Appeals should be granted.

Respectfully submitted,

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Attorney for Petitioner Baker

January 10, 2011

Opinion filed April 29, 2010

[SEAL]

In The
Eleventh Court of Appeals

No. 11-09-00020-CR

EVERT CLYDE BAKER JR., Appellant

V.

STATE OF TEXAS, Appellee

On Appeal from the 396th District Court

Tarrant County, Texas

Trial Court Cause No. 1047321D

MEMORANDUM OPINION

The trial court convicted Evert Clyde Baker Jr. of felony driving while intoxicated and assessed his punishment at ten years confinement, probated for three years, and a $1,000 fine. We affirm.

I. *Background Facts*

Euless Police Officer Thomas White Tice was stopped at a red light. A motorcyclist pulled alongside and motioned for him to roll down his window. Officer Tice did so, and the motorcyclist said that he had just witnessed a black, Ford Ranger pickup "weaving all

over the road" and that he believed the driver was intoxicated. Officer Tice found the pickup, followed it, and observed it weaving within its lane. Officer Tice initiated a traffic stop and identified Baker as the driver. After conducting field sobriety tests, Officer Tice arrested Baker for driving while intoxicated.

Baker was indicted for felony driving while intoxicated. Baker waived a jury. At the close of the State's case, Baker's counsel challenged the legality of the stop by moving for an instructed verdict. The trial court denied the motion and ultimately found Baker guilty.

II. *Ineffective Assistance*

Baker's sole complaint on appeal is that he received ineffective assistance from trial counsel. Baker argues that his detention by Officer Tice was illegal and that his trial counsel was ineffective for not raising this by filing a motion to suppress or by objecting to the State's evidence. Baker contends that, had trial counsel done so, he would have been acquitted.

To determine whether Baker's trial counsel rendered ineffective assistance at trial, we must first determine whether Baker has shown that counsel's representation fell below an objective standard of reasonableness and, if so, then determine whether there is a reasonable probability that the result would have been different but for counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

When counsel has not had an opportunity to explain his actions, we must presume that the challenged action might be part of an overall strategic plan. *Thompson v. State*, 9 S.W.3d 808, 812-13 (Tex. Crim. App. 1999). Normally, the record on direct appeal will not be sufficient to overcome this presumption; however, Baker may overcome this presumption if the record reflects that counsel's omission would have been unacceptable regardless of any trial strategy. *Id.* at 814.

Baker acknowledges that trial counsel raised the legality of Officer Tice's stop during the motion for instructed verdict but contends this was an unreasonable strategy because that motion challenged the legal sufficiency of the evidence rather than its legality and because counsel failed to object to the State's exhibits. The State responds that trial counsel's decision to raise the legality of the stop by motion for directed verdict rather than motion to suppress was a reasonable trial strategy because jeopardy had then attached. Because Baker has failed to satisfy *Strickland*'s second prong, we need not determine whether counsel pursued a reasonable strategy.

For Fourth Amendment purposes, a traffic stop is a seizure and must be reasonable. *Davis v. State*, 947 S.W.2d 240, 243, 245 (Tex. Crim. App. 1997). Police officers may stop and briefly detain a person for investigative purposes if they have a reasonable suspicion supported by articulable facts that criminal activity may be afoot. *United States v. Sokolow*, 490 U.S. 1, 7 (1989). Reasonable suspicion exists when,

based on the totality of the circumstances, the officer has specific, articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably conclude that a particular person is, has been, or soon will be engaged in criminal activity. *Ford v. State*, 158 S.W.3d 488, 492-93 (Tex. Crim. App. 2005).

Baker contends that Officer Tice lacked the authority to detain him because his testimony did not establish any predicate criminal activity. Baker notes that Officer Tice merely observed him weaving within his own lane. Baker relies upon *State v. Tarvin*, 972 S.W.2d 910 (Tex. App. – Waco 1998, pet. ref'd), for the proposition that weaving within a single lane of traffic alone is insufficient to justify a temporary detention. Baker's argument, however, fails to consider the information Officer Tice received from the motorcyclist. Officer Tice testified that the motorcycle rider told him "that a black Ranger pickup that had just turned southbound on Main Street was weaving all over the road and he believed the driver to be intoxicated." The rider pointed, and Officer Tice saw a Ranger pickup traveling southbound on Main.

Baker contends that the motorcyclist's statement did not justify his detention because it was not corroborated. *See Florida v. J.L.*, 529 U.S. 266, 270 (2000) (uncorroborated tip by unnamed informant of undisclosed reliability standing alone rarely will establish the requisite level of suspicion necessary to justify an investigative detention). Corroboration of a citizen's statement does not require independently

acquired reasonable suspicion of criminal behavior. *Brother v. State*, 166 S.W.3d 255, 258-59 & n.5 (Tex. Crim. App. 2005) (officer need not personally witness facts giving rise to criminal activity before relying upon a citizen's report). Rather, corroboration refers to whether the police officer, in light of the circumstances, confirms sufficient facts to reasonably conclude that the citizen's information is reliable. *Alabama v. White*, 496 U.S. 325, 330-31 (1990). Texas courts have held that statements such as that given by the motorcyclist were properly corroborated when the officer observed the driver weaving within a single lane of traffic. *See State v. Nelson*, 228 S.W.3d 899, 904 (Tex. App. – Austin 2007, no pet.); *Mitchell v. State*, 187 S.W.3d 113, 118 (Tex. App. – Waco 2006, pet. ref'd). Texas courts have also recognized that citizen tips are entitled to great weight if the informant puts himself in a position to be easily identified and held accountable for his intervention. *Mitchell*, 187 S.W.3d at 117. Officer Tice did not get the motorcyclist's name, but the rider put himself in a position to be easily identified and held accountable for his intervention by reporting in person.

Baker has failed to establish a reasonable probability that a motion to suppress or an objection to the State's evidence would have been successful. The information Officer Tice received from the motorcyclist, coupled with his own personal observations, justified a temporary detention. Baker's issue is overruled.

III. *Conclusion*

The judgment of the trial court is affirmed.

RICK STRANGE
JUSTICE

April 29, 2010

Do not publish. *See* TEX R. APP. P. 47.2(b).

Panel consists of: Wright, C.J.

McCall, J., and Strange, J.

[SEAL]

CASE NO. 1047321D **COUNT ONE**
INCIDENT NO./TRN: 9095193292

THE STATE OF TEXAS	§ **IN THE 396TH**
	§ **DISTRICT COURT**
v.	§
EVERT CLYDE BAKER JR	§ **TARRANT COUNTY,**
	§ **TEXAS**
STATE ID NO.: TX02598606	§

JUDGMENT OF CONVICTION BY COURT – WAIVER OF JURY TRIAL

Judge Presiding:	**HON. GEORGE GALLAGHER**
Date Judgment Entered:	9/5/2008
Attorney for State:	**TIM CURRY** **SUSAN PRUETT**
Attorney for Defendant:	**BRIAN J. WILLETT**

Offense for which Defendant Convicted:
DRIVING WHILE INTOXICATED AND FELONY REPETITION

Charging Instrument:	Statute for Offense:
Indictment	**49.04 PC**

Date of Offense:
12/6/2006

Degree of Offense:	Plea to Offense:
3RD DEGREE FELONY	**NOT GUILTY**

Findings on Deadly Weapon: **N/A**

Terms of Plea Bargain:
OPEN PLEA

Plea to 1st Enhancement Paragraph:	Plea to 2nd Enhancement/ Habitual Paragraph
N/A	**N/A**
Findings on 1st Enhancement Paragraph:	Findings on 2nd Enhancement/ Habitual Paragraph:
N/A	**N/A**
Date Sentence Imposed:	**9/5/2008**
Date Sentence to Commence:	**9/5/2008**
Punishment and Place of Confinement:	**10 YEARS Institutional Division, TDCJ**

THIS SENTENCE SHALL RUN N/A.

☒ **SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR 3 Years.**

Fine:	Court Costs:	Restitution:
$1,000.00 Not Suspended	**$391.00**	**N/A**

Restitution Payable to:

☐ **VICTIM** (see below) ☐ **AGENCY/AGENT** (see below)

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62

The age of the victim at the time of the offense was **N/A**.

Time Credited: If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A Days Notes: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in **TARRANT** County, Texas. The State appeared by her District Attorney.

Counsel/Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.

☐ Defendant knowingly, intelligently, and voluntarily waived the right of representation by counsel in writing in open court.

Both parties announced ready for trial. Defendant waived the right of trial by jury and entered the plea indicated above. The Court then admonished Defendant as required by law. It appeared to the Court that Defendant was mentally competent to stand trial, made the plea freely and voluntarily, and was aware of the consequences of this plea. The Court received the plea and entered it of record. Having heard the evidence submitted, the Court found Defendant guilty of the offense indicated above. In the presence of Defendant, the Court pronounced sentence against Defendant.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, Institutional Division, TDCJ.** The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the **Tarrant County District Clerk**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **County Jail Confinement/Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of County, Texas on the date the sentence is to commence. Defendant shall be confined in the County Jail for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the . Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the Office of the County . Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution/Suspension of Sentence (select one)

☒ The Court **ORDERS** Defendant's sentence **EXECUTED**.

☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

DWI FELONY REPETITION: 2 PRIOR MISDEMEANOR CONVICTIONS

FINE IN THE AMOUNT OF $1,000.00 AND COURT COSTS IN THE AMOUNT OF $391.00, PAYABLE TO AND THROUGH THE CRIMINAL

DISTRICT CLERK'S OFFICE OF TARRANT COUNTY, TEXAS

Signed and entered on 10/7/2008

X /s/ George Gallagher

JUDGE PRESIDING

CASE NO. 1047321D **COUNT ONE**
INCIDENT NO./TRN: 9095193292

THE STATE OF TEXAS	§ **IN THE 396TH**
	§ **DISTRICT COURT**
v.	§
EVERT CLYDE BAKER JR	§ **TARRANT COUNTY,**
STATE ID NO.: TX02598606	§ **TEXAS**
	§ **Date:** 9/5/08

CID #0476698

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X /s/ [Illegible] 026421

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JUDGMENT AND SENTENCE
FINGERPRINT PAGE Clerk
/s/ [Illegible]

OFFICIAL NOTICE FROM COURT OF
CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION,
AUSTIN, TEXAS 78711

[SEAL]

Wednesday, October 13, 2010
Re: Case No. PD-0853-10
COA#: 11-09-00020-CR
STYLE: BAKER, EVERT CLYDE JR.

[LOGO] UNITED STATES POSTAGE

PITNEY BOWES

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MAILED FROM ZIP CODE 78701

On this day, the Appellant's petition for discretionary review has been refused.

Louise Pearson, Clerk

L. PATRICK DAVIS
115 N HENDERSON STREET
FORT WORTH TX 76102